United Nations PCNICC/2000/L.1/Rev.1/Add.2

Preparatory Commission for the International Criminal Court

Distr.: Limited
7 April 2000

Original: English

New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Addendum

Annex III

Elements of Crimes

Contents

Article		*Page*
	General introduction	5
	Article 6: Genocide	6
	Introduction	6
6(a)	Genocide by killing	6
6(b)	Genocide by causing serious bodily or mental harm	6
6(c)	Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction	7
6(d)	Genocide by imposing measures intended to prevent births	7
6(e)	Genocide by forcibly transferring children	8
	Article 7: Crimes against humanity	8
	Chapeau for crimes against humanity	8
7(1)(a)	Crime against humanity of murder	9
7(1)(b)	Crime against humanity of extermination	9
7(1)(c)	Crime against humanity of enslavement	10
7(1)(d)	Crime against humanity of deportation or forcible transfer of population	10
7(1)(e)	Crime against humanity of imprisonment or other severe deprivation of physical liberty	11

00-38370 (E) 270400

7(1)(f)	Crime against humanity of torture	11
7(1)(g)-1	Crime against humanity of rape	11
7(1)(g)-2	Crime against humanity of sexual slavery	12
7(1)(g)-3	Crime against humanity of enforced prostitution	12
7(1)(g)-4	Crime against humanity of forced pregnancy	12
7(1)(g)-5	Crime against humanity of enforced sterilization	13
7(1)(g)-6	Crime against humanity of sexual violence	13
7(1)(h)	Crime against humanity of persecution	14
7(1)(i)	Crime against humanity of enforced disappearance of persons	14
7(1)(j)	Crime against humanity of apartheid	15
7(1)(k)	Crime against humanity of other inhumane acts	15
	Article 8: War crimes	15
	Introduction	15
	Article 8 (2) (a)	16
8(2)(a)(i)	War crime of wilful killing	16
8(2)(a)(ii)-1	War crime of torture	17
8(2)(a)(ii)-2	War crime of inhuman treatment	17
8(2)(a)(ii)-3	War crime of biological experiments	17
8(2)(a)(iii)	War crime of wilfully causing great suffering	18
8(2)(a)(iv)	War crime of destruction and appropriation of property	18
8(2)(a)(v)	War crime of compelling service in hostile forces	19
8(2)(a)(vi)	War crime of denying a fair trial	19
8(2)(a)(vii)-1	War crime of unlawful deportation and transfer	19
8(2)(a)(vii)-2	War crime of unlawful confinement	20
8(2)(a)(viii)	War crime of taking hostages	20
	Article 8 (2) (b)	21
8(2)(b)(i)	War crime of attacking civilians	21
8(2)(b)(ii)	War crime of attacking civilian objects	21
8(2)(b)(iii)	War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission	21
8(2)(b)(iv)	War crime of excessive incidental death, injury, or damage	22
8(2)(b)(v)	War crime of attacking undefended places	23
8(2)(b)(vi)	War crime of killing or wounding a person *hors de combat*	23
8(2)(b)(vii)-1	War crime of improper use of a flag of truce	23

8(2)(b)(vii)-2	War crime of improper use of a flag, insignia or uniform of the hostile party	24
8(2)(b)(vii)-3	War crime of improper use of a flag, insignia or uniform of the United Nations	24
8(2)(b)(vii)-4	War crime of improper use of the distinctive emblems of the Geneva Conventions	25
8(2)(b)(viii)	The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory	25
8(2)(b)(ix)	War crime of attacking protected objects	26
8(2)(b)(x)-1	War crime of mutilation	26
8(2)(b)(x)-2	War crime of medical or scientific experiments	27
8(2)(b)(xi)	War crime of treacherously killing or wounding	27
8(2)(b)(xii)	War crime of denying quarter	28
8(2)(b)(xiii)	War crime of destroying or seizing the enemy's property	28
8(2)(b)(xiv)	War crime of depriving the nationals of the hostile power of rights or actions	28
8(2)(b)(xv)	War crime of compelling participation in military operations	29
8(2)(b)(xvi)	War crime of pillaging	29
8(2)(b)(xvii)	War crime of employing poison or poisoned weapons	30
8(2)(b)(xviii)	War crime of employing prohibited gases, liquids, materials or devices	30
8(2)(b)(xix)	War crime of employing prohibited bullets	30
8(2)(b)(xx)	War crime of employing weapons, projectiles or materials or methods of warfare listed in the Annex to the Statute	31
8(2)(b)(xxi)	War crime of outrages upon personal dignity	31
8(2)(b)(xxii)-1	War crime of rape	31
8(2)(b)(xxii)-2	War crime of sexual slavery	32
8(2)(b)(xxii)-3	War crime of enforced prostitution	32
8(2)(b)(xxii)-4	War crime of forced pregnancy	33
8(2)(b)(xxii)-5	War crime of enforced sterilization	33
8(2)(b)(xxii)-6	War crime of sexual violence	33
8(2)(b)(xxiii)	War crime of using protected persons as shields	34
8(2)(b)(xxiv)	War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions	34
8(2)(b)(xxv)	War crime of starvation as a method of warfare	34
8(2)(b)(xxvi)	War crime of using, conscripting or enlisting children	35
	Article 8 (2) (c)	35
8(2)(c)(i)-1	War crime of murder	35
8(2)(c)(i)-2	War crime of mutilation	35

8(2)(c)(i)-3	War crime of cruel treatment	36
8(2)(c)(i)-4	War crime of torture	36
8(2)(c)(ii)	War crime of outrages upon personal dignity	37
8(2)(c)(iii)	War crime of taking hostages	37
8(2)(c)(iv)	War crime of sentencing or execution without due process	38
	Article 8 (2) (e)	38
8(2)(e)(i)	War crime of attacking civilians	38
8(2)(e)(ii)	War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions	39
8(2)(e)(iii)	War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission	39
8(2)(e)(iv)	War crime of attacking protected objects	40
8(2)(e)(v)	War crime of pillaging	40
8(2)(e)(vi)-1	War crime of rape	40
8(2)(e)(vi)-2	War crime of sexual slavery	41
8(2)(e)(vi)-3	War crime of enforced prostitution	41
8(2)(e)(vi)-4	War crime of forced pregnancy	42
8(2)(e)(vi)-5	War crime of enforced sterilization	42
8(2)(e)(vi)-6	War crime of sexual violence	42
8(2)(e)(vii)	War crime of using, conscripting and enlisting children	43
8(2)(e)(viii)	War crime of displacing civilians	43
8(2)(e)(ix)	War crime of treacherously killing or wounding	43
8(2)(e)(x)	War crime of denying quarter	44
8(2)(e)(xi)-1	War crime of mutilation	44
8(2)(e)(xi)-2	War crime of medical or scientific experiments	45
8(2)(e)(xii)	War crime of destroying or seizing the enemy's property	45

Elements of Crimes

(Prepared on the basis of the discussion papers proposed by the Coordinator)*

General introduction[1]

1. Pursuant to article 9, the following Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Statute. The provisions of the Statute, including article 21, and the general principles set out in Part 3 are applicable to the Elements of Crimes.

2. As stated in article 30, unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in article 30 applies. Exceptions to the article 30 standard, based on the Statute, including applicable law under its relevant provisions, are indicated below.

3. Existence of intent and knowledge can be inferred from relevant facts and circumstances.

4. With respect to mental elements associated with elements involving value judgement, such as those using the terms "inhumane" or "severe", it is not necessary that the accused personally completed a particular value judgement, unless otherwise indicated.

5. Grounds for excluding criminal responsibility or the absence thereof are generally not specified in the elements of crimes listed under each crime.

6. The requirement of "unlawfulness" found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes.

7. The elements of crimes are generally structured in accordance with the following principles:

- As the elements of crimes focus on the conduct, consequences and circumstances associated with each crime, they are generally listed in that order;

---

* The Preparatory Commission considered the elements of the crime of genocide and of war crimes at its fourth session and deferred its consideration of the elements of crimes against humanity to its next session.

[1] **N.B.** The text of the general introduction, which applies to all crimes and will not be repeated for each type of crime, will have to be revisited towards the end of the second reading of Elements of Crimes for any possible inconsistencies with the elements listed under each crime and to include possible additional language common to all types of crimes, such as comments on sexual crimes. If a decision is taken to use short titles for the crimes, there should be a sentence in the general introduction explaining that the short titles have no legal effect.

- When required, a particular mental element is listed after the affected conduct, consequence or circumstance;
- Contextual circumstances are listed last.

Article 6
Genocide

Introduction

With respect to the last element listed for each crime:

- The term "in the context of" would include the initial acts in an emerging pattern;
- The term "manifest" is an objective qualification;
- Notwithstanding the normal requirement for a mental element provided for in article 30, and recognizing that knowledge of the circumstances will usually be addressed in proving genocidal intent, the appropriate requirement, if any, for a mental element regarding this circumstance will need to be decided by the Court on a case-by-case basis.

Article 6 (a)
Genocide by killing

Elements

1. The accused killed one or more persons.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The accused intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (b)
Genocide by causing serious bodily or mental harm

Elements

1. The accused caused serious bodily or mental harm to one or more persons.[2]

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

[2] This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

3. The accused intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (c)
Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

Elements

1. The accused inflicted certain conditions of life upon one or more persons.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The accused intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.[3]

5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (d)
Genocide by imposing measures intended to prevent births

Elements

1. The accused imposed certain measures upon one or more persons.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The accused intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The measures imposed were intended to prevent births within that group.

5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

[3] The term "conditions of life" may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

Article 6 (e)
Genocide by forcibly transferring children

Elements

1. The accused forcibly transferred one or more persons.[4]

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The accused intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The transfer was from that group to another group.

5. The person or persons were under the age of 18 years.

6. The accused knew, or should have known, that the person or persons were under the age of 18 years.

7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 7*
Crimes against humanity

Chapeau for crimes against humanity

The following general paragraphs would be included as an introduction to the Elements of Article 7.[5]

> "Consistent with the general principles of law defined in article 30, it is presumed that all conduct described in the elements must be intentionally committed and the elements do not repeat the general intent implied in each action. Likewise, the elements presume that the conduct is not otherwise legally justified under applicable law referred to in article 21, paragraph 1(b) and (c), of the Statute. Hence, the element of 'unlawfulness' that exists in the Statute and in the jurisprudence of many of these offences has not been repeated in the elements of crimes. Absence of a lawful justification for a particular action need not be proved by the Prosecutor unless the issue is raised by the accused.

---

* The Preparatory Commission did not consider the elements of crimes for article 7 at its fourth session.

[4] The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.

[5] The inclusion of general paragraphs and footnotes in this text is without prejudice to the final structure of the Elements of Crimes. There is still some concern regarding the formulation of these general paragraphs. There is also an appreciation that a reconsideration could have an impact on the substance of the elements. Some delegations felt the need to define the terms "widespread" and "systematic". Others expressed concern regarding the need to ensure consistency between parts of the *chapeau* and certain elements of specific crimes.

"The first two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, this element should not be interpreted as requiring proof that the accused had knowledge of all characteristics of the attack or the precise details of the plan or policy of the state or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the second element indicates that the *mens rea* is satisfied if the accused intended to further such an attack. As always, existence of knowledge or intent can be inferred from relevant facts and circumstances.

"'Attack directed against a civilian population' in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that a 'policy to commit such attack' requires that the State or organization actively promote or encourage such conduct as an attack against a civilian population."

Article 7 (1) (a)
Crime against humanity of murder

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused[6] killed[7] one or more persons.

Article 7 (1) (b)
Crime against humanity of extermination

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused killed[8] one or more persons as part of, or in the context of, a mass killing of members of a civilian population, either directly or indirectly, *inter alia*, by inflicting conditions of life calculated to bring about the destruction of part of a population.[9]

---

[6] The term "accused" has been used provisionally and needs to be discussed to ensure consistency with the Statute.

[7] The term "killed" is interchangeable with the term "caused death".

[8] The term "killed" is interchangeable with the term "caused death".

[9] Some delegations believe that death is not required. Other delegations believe that the accused must cause multiple deaths. In the latter case, the fourth element might not be necessary.

4. The accused intended the conduct to be part of such mass killing.[10]

Article 7 (1) (c)
Crime against humanity of enslavement

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[11]

Article 7 (1) (d)
Crime against humanity of deportation or forcible transfer of population

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused deported or forcibly transferred[12] one or more persons to another State or location, by expulsion or other coercive acts.

4. Such person or persons were lawfully present in the area from which they were so deported or transferred and the accused was aware of the factual circumstances that established the lawfulness of such presence.[13]

---

[10] This element is intended to provide the nexus between the *actus reus* (killing one or more persons) and the specific context of this crime (a mass killing of members of the civilian population). It is not related to the concept of "specific intent" as understood in relation to genocide.

[11] It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

[12] "Deported or forcibly transferred" is interchangeable with "forcibly displaced".

[13] Some delegations wish to insert the phrase "without grounds permitted under international law" after the word "transferred" in element 3 in order to reflect the *lex specialis* governing deportation as stipulated in the Statute. Those delegations wish also to include the phrase "under international law" after the words "lawfully present" in the first line of element 4.

Article 7 (1) (e)
Crime against humanity of imprisonment or other severe deprivation of physical liberty

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.

4. The gravity of the conduct was such that it was in violation of fundamental rules of international law and the accused was aware of such gravity.[14]

Article 7 (1) (f)
Crime against humanity of torture

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

4. Such person or persons were in the custody or under the control of the accused.

5. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions, and the accused was so aware.[15]

Article 7 (1) (g)-1
Crime against humanity of rape[16]

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body[17] of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

---

[14] Some delegations want to add the concept of universal recognition to qualify "fundamental rules of international law".

[15] Some delegations prefer to include a purpose element.

[16] Elements for crimes of sexual violence are based on the elements of corresponding war crimes. It is understood that the agreement on these formulations is predicated on the compromise regarding the *chapeau*.

[17] The concept of "invasion" is intended to be broad enough to be gender-neutral.

4. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[18]

Article 7 (1) (g)-2
Crime against humanity of sexual slavery

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.

4. The accused caused such person or persons to engage in one or more acts of a sexual nature.

Article 7 (1) (g)-3
Crime against humanity of enforced prostitution

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[19]

4. The accused or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

Article 7 (1) (g)-4
Crime against humanity of forced pregnancy

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

---

[18] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

[19] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused confined one or more women.

4. Such woman or women had been forcibly made pregnant.

5. The accused intended to keep the woman or women pregnant in order to affect the ethnic composition of a population or to carry out another grave violation of international law.[20]

Article 7 (1) (g)-5
Crime against humanity of enforced sterilization

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused deprived one or more persons of biological reproductive capacity.[21]

4. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.[22] [23]

Article 7 (1) (g)-6
Crime against humanity of sexual violence

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.[24]

4. Such conduct was of a gravity comparable to the other offences in article 7, paragraph (1) (g), of the Statute.

---

[20] Some delegations were of the view that this element may require further drafting.

[21] The deprivation is not intended to include birth control measures. (The need for this footnote or its contents needs to be revisited.)

[22] The wording of this element has been adjusted from the corresponding war crimes element to improve its grammatical structure, without changing its substance.

[23] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

[24] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

Article 7 (1) (h)
Crime against humanity of persecution

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused severely deprived one or more persons or a group of fundamental rights.[25] [26]

4. The accused targeted such person or persons by reason of their belonging to an identifiable group or collectivity.[27]

5. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.

6. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

Article 7 (1) (i)
Crime against humanity of enforced disappearance of persons[28]

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused arrested, detained or abducted one or more persons, whether lawfully or unlawfully.[29] [30]

4. Such conduct was carried out on behalf of, or with the authorization, support or acquiescence of, a State or a political organization.

5. The accused subsequently refused, or was aware of a refusal, to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of such person or persons.[31] [32]

---

[25] Some delegations want to add the concept of universal recognition to qualify "fundamental rights".

[26] Some delegations were of the view that targeting of groups should be included.

[27] Some delegations were of the view that targeting of groups should be included.

[28] Some delegations were of the view that this crime requires further consideration to identify the *actus reus* of the accused.

[29] Some delegations were of the view that the reference to "lawfully or unlawfully" was not needed.

[30] Some delegations were of the view that the competence *ratione temporis* of the Court with respect to this crime should be clarified in the light of the relevant provisions of the Statute.

[31] Some delegations were of the view that the relationship between this element and the *chapeau* should be clarified.

[32] Some delegations believe this element is too restrictive. Some delegations believe this element is too expansive. Further drafting may be required.

6. The accused intended to remove such person or persons from the protection of the law for a prolonged period of time.

Article 7 (1) (j)
Crime against humanity of apartheid

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused committed an inhumane act against one or more persons.

4. Such act was an act referred to in article 7, paragraph 1, of the Statute, or was an act of a character similar to any of those acts.[33]

5. The conduct was committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups.

6. The accused intended to maintain such regime by that conduct.

Article 7 (1) (k)
Crime against humanity of other inhumane acts

1. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

2. The accused knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

3. The accused inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.[34]

4. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.[35]

Article 8: War crimes

Introduction

The elements for war crimes under article 8, paragraph 2 (c) and (e), are subject to the limitations addressed in article 8, paragraph 2 (d) and (f), which are not elements of crimes.

The elements for war crimes under article 8, paragraph 2, of the Statute shall be interpreted within the established framework of the international law of armed

[33] It is understood that "character" refers to the nature and gravity of the act.

[34] Some delegations want to add the concept of universally recognized principles to qualify "inhumane act".

[35] It is understood that "character" refers to the nature and gravity of the act.

conflict including, as appropriate, the international law of armed conflict applicable to armed conflict at sea.

With respect to the last two elements listed for each crime:

- There is no requirement for a legal evaluation by the accused as to the existence of an armed conflict or its character as international or non-international;
- In that context there is no requirement for awareness by the accused of the facts that established the character of the conflict as international or non-international;
- There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associated with".

Article 8 (2) (a)

Article 8 (2) (a) (i)
War crime of wilful killing

Elements

1. The accused killed one or more persons.[36] [37]

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The accused was aware of the factual circumstances that established that protected status.[38] [39]

4. The conduct took place in the context of and was associated with an international armed conflict.[40]

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

---

[36] **N.B**. The term "accused" has been used provisionally and needs to be discussed to ensure consistency with the Statute.

[37] The term "killed" is interchangeable with the term "caused death". This footnote applies to all elements which use either of these concepts.

[38] This mental element recognizes the interplay between articles 30 and 32. This footnote also applies to the corresponding element in each crime under article 8 (2) (a), and to the element in other crimes in article 8 (2) concerning the awareness of factual circumstances that establish the status of persons or property protected under the relevant international law of armed conflict.

[39] With respect to nationality, it is understood that the accused needs only to know that the victim belonged to an adverse party to the conflict. This footnote also applies to the corresponding element in each crime under article 8 (2) (a).

[40] The term "international armed conflict" includes military occupation. This footnote also applies to the corresponding element in each crime under article 8 (2) (a).

Article 8 (2) (a) (ii)-1
War crime of torture

Elements[41]

1. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

2. The accused inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.

3. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

4. The accused was aware of the factual circumstances that established that protected status.

5. The conduct took place in the context of and was associated with an international armed conflict.

6. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (ii)-2
War crime of inhuman treatment

Elements

1. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The accused was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (ii)-3
War crime of biological experiments

Elements

1. The accused subjected one or more persons to a particular biological experiment.

---

[41] As element 3 requires that all victims must be "protected persons" under one or more of the Geneva Conventions of 1949, these elements do not include the custody or control requirement found in the elements of article 7 (1) (e).

2. The experiment seriously endangered the physical or mental health or integrity of such person or persons.

3. The intent of the experiment was non-therapeutic and it was neither justified by medical reasons nor carried out in such person's or persons' interest.

4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

5. The accused was aware of the factual circumstances that established that protected status.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (iii)
War crime of wilfully causing great suffering

Elements

1. The accused caused great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The accused was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (iv)
War crime of destruction and appropriation of property

Elements

1. The accused destroyed or appropriated certain property.

2. The destruction or appropriation was not justified by military necessity.

3. The destruction or appropriation was extensive and carried out wantonly.

4. Such property was protected under one or more of the Geneva Conventions of 1949.

5. The accused was aware of the factual circumstances that established that protected status.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (v)
War crime of compelling service in hostile forces

Elements

1. The accused coerced one or more persons, by act or threat, to take part in military operations against that person's own country or forces or otherwise serve in the forces of a hostile power.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The accused was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vi)
War crime of denying a fair trial

Elements

1. The accused deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The accused was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vii)-1
War crime of unlawful deportation and transfer

Elements

1. The accused deported or transferred one or more persons to another State or to another location.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The accused was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vii)-2
War crime of unlawful confinement

Elements

1. The accused confined or continued to confine one or more persons to a certain location.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The accused was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (viii)
War crime of taking hostages

Elements

1. The accused seized, detained or otherwise held hostage one or more persons.

2. The accused threatened to kill, injure or continue to detain such person or persons.

3. The accused intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

5. The accused was aware of the factual circumstances that established that protected status.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b)*

Article 8 (2) (b) (i)
War crime of attacking civilians

Elements

1. The accused directed an attack.

2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.

3. The accused intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (ii)
War crime of attacking civilian objects

Elements

1. The accused directed an attack.

2. The object of the attack was civilian objects, that is, objects which are not military objectives.

3. The accused intended such civilian objects to be the object of the attack.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (iii)
War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

Elements

1. The accused directed an attack.

---

* The question of alignment of the titles of crimes in the Elements of Crimes with those of the Statute will be addressed at the next session.

2. The object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.

3. The accused intended such personnel, installations, material, units or vehicles so involved to be the object of the attack.

4. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.

5. The accused was aware of the factual circumstances that established that protection.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (iv)
War crime of excessive incidental death, injury, or damage

Elements

1. The accused launched an attack.

2. The attack was such that it would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[42]

3. The accused knew that the attack would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[43]

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

---

[42] The expression "concrete and direct overall military advantage" refers to a military advantage that is foreseeable by the accused at the relevant time. Such advantage may or may not be temporally or geographically related to the object of the attack. The fact that this crime admits the possibility of lawful incidental injury and collateral damage does not in any way justify any violation of the law applicable in armed conflict. It does not address justifications for war or other rules related to *jus ad bellum*. It reflects the proportionality requirement inherent in determining the legality of any military activity undertaken in the context of an armed conflict.

[43] This element may have to be re-evaluated to clarify the relevant value judgement in the light of paragraph 4 of the General Introduction.

Article 8 (2) (b) (v)
War crime of attacking undefended places[44]

Elements

1. The accused attacked one or more towns, villages, dwellings or buildings.

2. Such towns, villages, dwellings or buildings were open for unresisted occupation.

3. Such towns, villages, dwellings or buildings did not constitute military objectives.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vi)
War crime of killing or wounding a person *hors de combat*

Elements

1. The accused killed or injured one or more persons.

2. Such person or persons were *hors de combat*.

3. The accused was aware of the factual circumstances that established this status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-1
War crime of improper use of a flag of truce

Elements

1. The accused used a flag of truce.

2. The accused made such use in order to feign an intention to negotiate when there was no such intention on the part of the accused.

3. The accused knew or should have known of the prohibited nature of such use.[45]

---

[44] The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

[45] This mental element recognizes the interplay between article 30 and article 32. The term "prohibited nature" denotes illegality.

4. The conduct resulted in death or serious personal injury.

5. The accused knew that the conduct could result in death or serious personal injury.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-2
War crime of improper use of a flag, insignia or uniform of the hostile party

Elements

1. The accused used a flag, insignia or uniform of the hostile party.

2. The accused made such use in a manner prohibited under the international law of armed conflict while engaged in an attack.

3. The accused knew or should have known of the prohibited nature of such use.[46]

4. The conduct resulted in death or serious personal injury.

5. The accused knew that the conduct could result in death or serious personal injury.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-3
War crime of improper use of a flag, insignia or uniform of the United Nations

Elements

1. The accused used a flag, insignia or uniform of the United Nations.

2. The accused made such use in a manner prohibited under the international law of armed conflict.

3. The accused knew of the prohibited nature of such use.[47]

4. The conduct resulted in death or serious personal injury.

[46] This mental element recognizes the interplay between article 30 and article 32. The term "prohibited nature" denotes illegality.

[47] This mental element recognizes the interplay between article 30 and article 32. The "should have known" test required in the other offences found in article 8 (2) (b) (vii) is not applicable here because of the variable and regulatory nature of the relevant prohibitions.

5. The accused knew that the conduct could result in death or serious personal injury.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-4
War crime of improper use of the distinctive emblems of the Geneva Conventions

Elements

1. The accused used the distinctive emblems of the Geneva Conventions.

2. The accused made such use for combatant purposes[48] in a manner prohibited under the international law of armed conflict.

3. The accused knew or should have known of the prohibited nature of such use.[49]

4. The conduct resulted in death or serious personal injury.

5. The accused knew that the conduct could result in death or serious personal injury.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (viii)
The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

Elements

1. The perpetrator:

(a) Transferred,[50] directly or indirectly, parts of its own population into the territory it occupies; or

---

[48] "Combatant purposes" in these circumstances means purposes directly related to hostilities and not including medical, religious or similar activities.

[49] This mental element recognizes the interplay between article 30 and article 32. The term "prohibited nature" denotes illegality.

[50] The term "transfer" needs to be interpreted in accordance with the relevant provisions of international humanitarian law.

(b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.

2. The conduct took place in the context of and was associated with an international armed conflict.

3. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (ix)
War crime of attacking protected objects[51]

Elements

1. The accused directed an attack.

2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.

3. The accused intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (x)-1
War crime of mutilation

Elements

1. The accused subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.

2. The conduct caused death or seriously endangered the physical or mental health of such person or persons.

3. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.[52]

---

[51] The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

[52] Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical

4. Such person or persons were in the power of an adverse party.

5. The conduct took place in the context of and was associated with an international armed conflict.

6. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (x)-2
War crime of medical or scientific experiments

Elements

1. The accused subjected one or more persons to a medical or scientific experiment.

2. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.

3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.

4. Such person or persons were in the power of an adverse party.

5. The conduct took place in the context of and was associated with an international armed conflict.

6. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xi)
War crime of treacherously killing or wounding

Elements

1. The accused invited the confidence or belief of one or more persons that they were entitled to, or were obliged to accord, protection under rules of international law applicable in armed conflict.

2. The accused intended to betray that confidence or belief.

3. The accused killed[53] or injured such person or persons.

4. The accused made use of that confidence or belief in killing or injuring such person or persons.

5. Such person or persons belonged to an adverse party.

6. The conduct took place in the context of and was associated with an international armed conflict.

---

circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty. This footnote also applies to the same element for article 8 (2) (b) (x)-2.

[53] The term "killed" is interchangeable with the term "caused death".

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xii)
War crime of denying quarter

Elements

1. The accused declared or ordered that there shall be no survivors.

2. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.

3. The accused was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xiii)
War crime of destroying or seizing the enemy's property

Elements

1. The accused destroyed or seized certain property.

2. Such property was property of a hostile party.

3. Such property was protected from that destruction or seizure under the international law of armed conflict.

4. The accused was aware of the factual circumstances that established the status of the property.

5. The destruction or seizure was not justified by military necessity.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xiv)
War crime of depriving the nationals of the hostile power of rights or actions

Elements

1. The accused effected the abolition, suspension or termination of admissibility in a court of law of certain rights or actions.

2. The abolition, suspension or termination was directed at the nationals of a hostile party.

3. The accused intended the abolition, suspension or termination to be directed at the nationals of a hostile party.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xv)
War crime of compelling participation in military operations

Elements

1. The accused coerced one or more persons by act or threat to take part in military operations against that person's own country or forces.

2. Such person or persons were nationals of a hostile party.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xvi)
War crime of pillaging

Elements

1. The accused appropriated certain property.

2. The accused intended to deprive the owner of the property and to appropriate it for private or personal use.[54]

3. The appropriation was without the consent of the owner.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

[54] As indicated by the use of the term "private or personal use", appropriations justified by military necessity cannot constitute the crime of pillaging.

Article 8 (2) (b) (xvii)
War crime of employing poison or poisoned weapons

Elements

1. The accused employed a substance or a weapon that releases a substance as a result of its employment.

2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xviii)
War crime of employing prohibited gases, liquids, materials or devices

Elements

1. The accused employed a gas or other analogous substance or device.

2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.[55]

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xix)
War crime of employing prohibited bullets

Elements

1. The accused employed certain bullets.

2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.

3. The accused was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.

4. The conduct took place in the context of and was associated with an international armed conflict.

---

[55] Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to development, production, stockpiling and use of chemical weapons.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xx)
War crime of employing weapons, projectiles or materials or methods of warfare listed in the Annex to the Statute

Elements

[Elements will have to be drafted once weapons, projectiles or material or methods of warfare have been included in an annex to the Statute.]

Article 8 (2) (b) (xxi)
War crime of outrages upon personal dignity

Elements

1. The accused humiliated, degraded or otherwise violated the dignity of one or more persons.[56]

2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-1
War crime of rape

Elements

1. The accused invaded[57] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[58]

---

[56] For this crime, "persons" can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

[57] The concept of "invasion" is intended to be broad enough to be gender-neutral.

[58] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 8 (2) (b) (xxii)-3 and 6.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-2
War crime of sexual slavery

Elements

1. The accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[59]

2. The accused caused such person or persons to engage in one or more acts of a sexual nature.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-3
War crime of enforced prostitution

Elements

1. The accused caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. The accused or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

[59] It is understood that the conduct described in this element includes trafficking in persons, in particular women and children.

Article 8 (2) (b) (xxii)-4
War crime of forced pregnancy

Elements

1. The accused confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

2. The conduct took place in the context of and was associated with an international armed conflict.

3. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-5
War crime of enforced sterilization

Elements

1. The accused deprived one or more persons of biological reproductive capacity.[60]

2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-6
War crime of sexual violence

Elements

1. The accused committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. The conduct was of a gravity comparable to that of a grave breach of the Geneva Conventions.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

---

[60] The deprivation is not intended to include birth-control measures with short-term effect.

Article 8 (2) (b) (xxiii)
War crime of using protected persons as shields

Elements

1. The accused moved or otherwise took advantage of the location of one or more civilians or other persons protected under the international law of armed conflict.

2. The accused intended to shield a military objective from attack or shield, favour or impede military operations.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxiv)
War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions

Elements

1. The accused attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.

2. The accused intended such persons, buildings, units or transports or other objects so using such identification to be the object of the attack.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxv)
War crime of starvation as a method of warfare

Elements

1. The accused deprived civilians of objects indispensable to their survival.

2. The accused intended to starve civilians as a method of warfare.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxvi)
War crime of using, conscripting or enlisting children

Elements

1. The accused conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.

2. Such person or persons were under the age of 15 years.

3. The accused knew or should have known that such person or persons were under the age of 15 years.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c)*

Article 8 (2) (c) (i)-1
War crime of murder

Elements

1. The accused killed one or more persons.[61]

2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel[62] taking no active part in the hostilities.

3. The accused was aware of the factual circumstances that established this status.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-2
War crime of mutilation

Elements

1. The accused subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.

---

* The question of alignment of the titles of crimes in the Elements of Crimes with those of the Statute will be addressed at the next session.

[61] The term "killed" is interchangeable with the term "caused death".

[62] The term "religious personnel" includes those non-confessional non-combatant military personnel carrying out a similar function.

2. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interests.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

4. The accused was aware of the factual circumstances that established this status.

5. The conduct took place in the context of and was associated with an armed conflict not of an international character.

6. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-3
War crime of cruel treatment

Elements

1. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.

3. The accused was aware of the factual circumstances that established this status.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-4
War crime of torture

Elements

1. The accused inflicted severe physical or mental pain or suffering upon one or more persons.

2. The accused inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

4. The accused was aware of the factual circumstances that established this status.

5. The conduct took place in the context of and was associated with an armed conflict not of an international character.

6. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (ii)
War crime of outrages upon personal dignity

Elements

1. The accused humiliated, degraded or otherwise violated the dignity of one or more persons.[63]

2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

4. The accused was aware of the factual circumstances that established this status.

5. The conduct took place in the context of and was associated with an armed conflict not of an international character.

6. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (iii)
War crime of taking hostages

Elements

1. The accused seized, detained or otherwise held hostage one or more persons.

2. The accused threatened to kill, injure or continue to detain such person or persons.

3. The accused intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

4. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

5. The accused was aware of the factual circumstances that established this status.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

---

[63] For this crime, "persons" can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

Article 8 (2) (c) (iv)
War crime of sentencing or execution without due process

Elements

1. The accused passed sentence or executed one or more persons.[64]

2. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

3. The accused was aware of the factual circumstances that established this status.

4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not "regularly constituted", that is, it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law.[65]

5. The accused was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e)*

Article 8 (2) (e) (i)
War crime of attacking civilians

Elements

1. The accused directed an attack.

2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.

3. The accused intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

---

* The question of alignment of the titles of crimes in the Elements of Crimes with those of the Statute will be addressed at the next session.

[64] The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

[65] With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (ii)
War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions

Elements

1. The accused attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.

2. The accused intended such persons, buildings, units or transports or other objects so using such identification to be the object of the attack.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (iii)
War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

Elements

1. The accused directed an attack.

2. The object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.

3. The accused intended such personnel, installations, material, units or vehicles so involved to be the object of the attack.

4. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.

5. The accused was aware of the factual circumstances that established that protection.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (iv)
War crime of attacking protected objects[66]

Elements

1. The accused directed an attack.

2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.

3. The accused intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (v)
War crime of pillaging

Elements

1. The accused appropriated certain property.

2. The accused intended to deprive the owner of the property and to appropriate it for private or personal use.[67]

3. The appropriation was without the consent of the owner.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-1
War crime of rape

Elements

1. The accused invaded[68] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the

---

[66] The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

[67] As indicated by the use of the term "private or personal use", appropriations justified by military necessity cannot constitute the crime of pillaging.

[68] The concept of "invasion" is intended to be broad enough to be gender-neutral.

perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[69]

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-2
War crime of sexual slavery

Elements

1. The accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[70]

2. The accused caused such person or persons to engage in one or more acts of a sexual nature.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-3
War crime of enforced prostitution

Elements

1. The accused caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. The accused or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

---

[69] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements in article 8 (2) (e) (vi)-3 and 6.

[70] It is understood that the conduct described in this element includes trafficking in persons, in particular women and children.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-4
War crime of forced pregnancy

Elements

1. The accused confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

2. The conduct took place in the context of and was associated with an armed conflict not of an international character.

3. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-5
War crime of enforced sterilization

Elements

1. The accused deprived one or more persons of biological reproductive capacity.[71]

2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-6
War crime of sexual violence

Elements

1. The accused committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. The conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.

[71] The deprivation is not intended to include birth-control measures with short-term effect.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vii)
War crime of using, conscripting and enlisting children

Elements

1. The accused conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.

2. Such person or persons were under the age of 15 years.

3. The accused knew or should have known that such person or persons were under the age of 15 years.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (viii)
War crime of displacing civilians

Elements

1. The accused ordered a displacement of a civilian population.

2. Such order was not justified by the security of the civilians involved or by military necessity.

3. The accused was in a position to effect such displacement by giving such order.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (ix)
War crime of treacherously killing or wounding

Elements

1. The accused invited the confidence or belief of one or more combatant adversaries that they were entitled to, or were obliged to accord, protection under rules of international law applicable in armed conflict.

2. The accused intended to betray that confidence or belief.

3. The accused killed[72] or injured such person or persons.

4. The accused made use of that confidence or belief in killing or injuring such person or persons.

5. Such person or persons belonged to an adverse party.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (x)
War crime of denying quarter

Elements

1. The accused declared or ordered that there shall be no survivors.

2. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.

3. The accused was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xi)-1
War crime of mutilation

Elements

1. The accused subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.

2. The conduct caused death or seriously endangered the physical or mental health of such person or persons.

3. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.[73]

---

[72] The term "killed" is interchangeable with the term "caused death".

[73] Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty. This footnote also applies to the similar element in article 8 (2) (e) (xi)-2.

4. Such person or persons were in the power of another party to the conflict.

5. The conduct took place in the context of and was associated with an armed conflict not of an international character.

6. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xi)-2
War crime of medical or scientific experiments

Elements

1. The accused subjected one or more persons to a medical or scientific experiment.

2. The experiment caused the death or seriously endangered the physical or mental health or integrity of such person or persons.

3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.

4. Such person or persons were in the power of another party to the conflict.

5. The conduct took place in the context of and was associated with an armed conflict not of an international character.

6. The accused was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xii)
War crime of destroying or seizing the enemy's property

Elements

1. The accused destroyed or seized certain property.

2. Such property was property of an adversary.

3. Such property was protected from that destruction or seizure under the international law of armed conflict.

4. The accused was aware of the factual circumstances that established the status of the property.

5. The destruction or seizure was not required by military necessity.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The accused was aware of factual circumstances that established the existence of an armed conflict.